

1:05-cv-125

JONES v. CLARK 607 F.Supp. 251(E.D.Pa. 1984). In REYNOLDS v. WAGNER 936 F.Supp. 1216,1227(E.D.Pa. 1996)("Under the Fourteenth Amendment the State shall not "Deprive any person Life, Liberty or Property, without Due Process of Law.")U.S. Const. Amend. XIV. Money in an Inmate's Account is a Protected Property interest. CAMPBELL v. MILLER 787 F.2d 217,222(7th Cir. 1986); Quick v. JONES 754 F.2d 1521,1523 (9th Cir.1984); SCOTT v. ANGELONE 771 F.Supp. 1064,1067(D.Nev.1991) (There is No question that an Inmate's Interest in the funds in his Prison Account is a Protected Property Interest ...) ORLOFF v. CLELAND 708 F.2d 372,378(9th Cir.1983); HANSEN v. MAY 502 F.2d 728, 730(9th Cir.1974); MAHERS v. HALFORD 76 F.3d 951,954(8th Cir.1996) (we agree with the district court that inmates have a property interest in money received from outside sources. See JENSEN v. KLECKER 648 F.2d 1179,1183(8th Cir.1981)(holding that inmates have a property interest in their money); SELL v. PARATT 548 F.2d 753,757(8th Cir)(same)... Thus, inmates are entitled to Due Process before they can be deprived of these monies.

In SAMPLE v. DIECKS 885 F.2d 1099(3rd Cir. 1989)(Under the fourteenth amendment, a state may not authorize the deprivation of a protected liberty or property interest without providing a procedure in connection with that deprivation that meets the requirements of due process. LOGAN v. ZIMMERMAN BRUSH CO. 102 S.Ct. 1148(1982), and other Collecting Cases) at 1114. Also See BROWN v. TRENCH 787 F.2d 167,171(3d Cir. 1986)(If the property right is infringed on because of intentional action pursuant to a state procedure, a Pre-Deprivation hearing is required ... See LOUDERMILL; STANA. In STANA we stated "Patently, when the acts at issue were those of an official in a supervisory position, the governmental entity was in a position to provide some pre-deprivation process." STANA 775 F.2d at 130.)).

In order to see what process is due an analysis of administrative law must be considered. Section 101 of the law, 2 Pa.C.S.A., Defines an adjudication as any ... Decision ... by an agency affecting personal property rights. That being the case, the law requires at a minimum, to one who has lost a personal or property right via the action of a Pennsylvania State Agency or a Commonwealth Official is addressed in the administrative agency law. The inmate must be given an opportunity to be heard, all testimony must be recorded, and a full complete record of the proceedings must be kept. Reasonable examination and cross examination must be allowed. 2 Pa.C.S.A. §505. The adjudication must be in writing and contain findings of fact and reason for the decision. 2 Pa.C.S.A. §507. Thus, the failure to provide a proper hearing would render the adjudication invalid and must result in a remand. See **CALLAHAN v. PENNSYLVANIA STATE POLICE** 431 A.2d 946(1981); **HOLLOWAY v. LEHMAN** 671 A.2d 1179(Pa.Cmwlth.1996).

The Plaintiff also had No Hearings prior to the Illegal Takings, as in; **SHROYER v. PA DEPT. OF CORRECTIONS** 743 A.2d 534(Pa.Cmwlth. 1999); Lastly, the Act 84, 42 Pa.C.S.A. §9728(b)(5), and §9730, and the D.O.C. ADM 005(F) have been held Non Applicable to Civil Proceedings such as in the Plaintiff's Case. See **VEGA v. BEARD** 847 A.2d 153 (Pa.Cmwlth.2004), and the Defendants Knew of this, as they were told!

Therefore; the Plaintiff has shown a Due Process Violation of the 5th, and 14th, amendments, with the Illegal Takings, and No Pre, or Post Deprivation Hearings, and as a result of the Illegal Takings, the Plaintiff had his petition Dismissed do to Failure of Service, (to be addressed further), which constitutes an First Amendment Right to Access the Courts, and an Injury for §1983 Purposes.

E. RIGHT TO ACCESS THE COURT

The First Amendment to the Constitution States in Pertain Parts;
 Congress shall make no law respecting an establishment ... or
 abridging the freedom of speech, ... or the right of the people
 peaceably to assemble, and to petition the Government for a redress
 of grievances.

In **TURIANO v. SCHNARRS** 904 F.Supp. 400(M.D.Pa. 1995); The Court wrote. (Courts have found different birthplaces of the right of access to the courts, E.g. **SIMMONS v. DICKHAUT** 804 F.2d 182,183(1st Cir.1986)(sources of right of access include the First Amendment, the Due Process Clauses, and the Privileges and Immunities Clause of Article IV, Section 2). It is clear that this most important protection originates at least from the First Amendment and from the due process clauses of the Fifth and Fourteenth Amendments. **PROCUNIER v. MARTINEZ** 94 S.Ct. 1800,1814(1974)("The Constitutional guarantee of due process of law has as a corollary the requirement that prisoners be afforded access to the courts in order to challenge unlawful Convictions and to seek redress for violations of their constitutional rights"); **HUDSON v. PALMER** 104 S.Ct. 3194,3198(1984)((¹)prisoners have the constitutional right to petition the Government for redress of their grievances, which includes a reasonable right of access to the courts"). Also in **HODGE v. PRINCE** 730 F.Supp. 747(N.D.Tex.1990); The court wrote, "It is beyond dispute that a prisoner has a Constitutional right of access to the Courts E.g. **BOUNDS v. SMITH** 97 S.Ct. 1491,1494 (1977) **Ex PARTE HULL** 61 S.Ct. 640,641(1941)... The right is Fundamental. **BOUNDS** at 1498. In its most apparent form, the right of access protects one's physical access to the courts. **CROWDER** 884 F.2d at 811. Thus, prisonofficials cannot refuse to convey or other-

wise block transmission of legal documents that prisoners wish to send to the courts. *Id.* (citing *Ex PARTE HULL* 61 S.Ct. at 641). Prison officials may not deliberately delay mailing legal papers when they know such delay will effectively deny a prisoner access to the courts. *JACKSON v. PROCUNIER* 789 F.2d 307,310-312(5th Cir.1986).

The Plaintiff has stated the rejection of pieces of legal mail on various occasions which have Violated his First Amendment Right to Access the Courts. Under *BOUNDS v. SMITH* 97 S.Ct. 1491,1494-96 (1977)(prisoners are entitled to a reasonable amount of free postage for legal mail as a means of insuring their access to the Courts. *WASHINGTON v. JAMES* 782 F.2d 1134(2nd Cir1986); *GITTENS v. SULLIVAN* 848 F.2d 389(2nd Cir. 1988); *GAINS v. LANE* 790 F.2d 1299(7th Cir.1986).

F. ADVANCE FOR LEGAL MAIL AND INDIGENCY

The Plaintiff states that the Defendant's Refusal to Advance him postage Violates the Principle in *BOUNDS*. See, *BELL-BEY v. WILLIAMS* 87 F.2d 832(6th Cir.1996)(Citing *BOUT v. ABRAMAJTYS* 28 F.3d 1213(6th Cir.1994)); *KING v. ATIYEH* 814 F.2d 565(9th Cir. 1987); *BRYAN v. WERNER* 516 F.2d 233,239(Furthermore, in no event can the prison officials refuse to mail letters intended for the courts, as that is the most blatant example of impeded access to the courts.). Further, on concerning this issue; In *GLUTH v. KANGAS* 951 F.2d 1504(9th Cir. 1991), the courts found that ("Under the department's indigency Policy, an inmate may apply for indigency classification if his prison account balance is less than \$12.00 and his income from all sources during the previous thirty day period has not exceed \$12. We agree with the district court's conclusion that this policy, which according to uncontroverted facts forces inmates to choose between purchasing hygienic supplies and essential legal supplies, is UNACCEPTABLE." at 1508. see also *REYNOLDS v. WAGNER* 936 F.Supp. 1216(E.D.Pa.1996)

("Plaintiff assert that inmates receive an "indigent bag" ... Only after a fourteen day period in which the inmate's account has a balance of less than five dollars ... First of all, the inmate handbook states "If you wish to send legal mail and have no funds, the correspondence will be mailed, however, a negative balance will be applied to your account.") Id. at 1230. The Plaintiff states that he was Just Not given that Option, intentionally!

The Court in **CHRICEOL v. PHILLIPS** 169 F.3d 313(5th Cir.1999) wrote, (Interference with a prisoner'S Right to Access to the Court, such as a Delay, may result in a Constitutional deprivation.... Arguably, withholding access to a prison account to pay for legal fees could, at a minimum, cause a delay in access to the courts. Withholding money from a prison account could also effectively deny access to obtaining an attorney, filing a complaint, or mailing other legal documentation.) In **JOHN v. NEW YORK DEPT. OF CORRECTIONS** 130 Fed.Appx. 506(2nd Cir. 2005) wrote, ("Interference with legal mail implicates a prison inmate's rights to access to the courts and free speech as guaranteed by theFirst and Fourteenth Amendments to the U.S. Constitution.")(quoting **DAVIS v. GOORD** 320 F.3d 346,351 (2d Cir.2003) Id. at 507.

In **SIMKINS v. BRUCE** 406 F.3d 1239(10th Cir. 2005), the court wrote, (states may not erect barriers that impede the right of access of incarcerated persons. **SNYDER v. NOLEN** 380 F.3d 279,290-291(7th Cir.2004)... **GREEN v. JOHNSTON** 977 F.2d 1383,1389(10th Cir.1992)(any deliberate impediment to access [to the courts], even a delay of access, may constitute a constitutional deprivation). Id. at 1242. **WRENN v. FREEMAN** 894 F.Supp. 244(E.D.N.C. 1995)(the Constitution simply "does not require the elimination of all economic, intellectual and technological barriers to litigation." **SANDS v. LEWIS** 886 F.2d 1166,1169(9th Cir.1989)). The Plaintiff therefore states that,

"once a prisoner has alleged-and has offered a basis therefor-that the prison policy regarding mail handling or the provision of legal postage has deprived him of his ability to access the courts or that he has suffered adverse consequences as a result therefrom, he has stated a colorable claim. WHITE 886 F.2d at 723." WRENN 894 F.Supp. at 251. Thus this Plaintiff has made a showing of the Denial of his First Amendment right to Access the Courts, with the Denial of the Defendants to Mail his Petitions, as he did not have the funds on his account, that they took.

G. §1997e(e)'s APPLICATION

The Plaintiff contends that he does make a colorable showing of an Actual Injury, in his Complaint at #16, (Many Months of Mental Anguish) at #24, (Lot of Stressful Times) at #43, (Very Depressed) at #46, (Mental Harm) at #52 (which left the Plaintiff Very Depressed and Fighting Various Boughts of Mental Anguish). As a result of the many Days, and Months of the Mental and Emotional Abuse, the Plaintiff has Suffered many Physical Injuries, as a Direct Consequence of the Mental Distress, and Depression he indured, which included; HIGH BLOOD PRESSURE, SEVERE HEADACHES, VOMITTING, LOSS OF APPETITE, DIZZYNESS, SEVERE STOMACHACHES, IRRITABLE BOWEL SYNDROME, VARIATIONS IN BILE MOVEMENT, LOSS OF SLEEP, AND MOOD SWINGS. These Physical Symptoms are a direct manifestation from the Mental Stress, and Anguished Induced by the Defendants Actions. These Physical Injuries/Illments have been deemed as such for purposes of §1983. See WOLFE v. HORN 130 F.Supp.2d 648 (E.D.Pa. 2001)(she suffered headaches, nausea, vomiting, cramps, hot flashes, and hair loss....Thus the alleged constitutional violations caused direct physical injuries, with attendant emotional consequences.) Id. at 658. Also CALDWELL v.DISTRICT OF COLUMBIA 201 F.Supp.2d 27 (quoting GIBBS v. CROSS 160 F.3d 962(3d cir.1998)(severe headaches,

mucus, watery eyes from dust, lint, and shower orodor constitute "serious physical injury" under 28 U.S.C. §1915(g)) **CALDWELL** Id. at 33. In **KEMNER v. HEMPHILL** 199 F.Supp.2d 1264,1270-71(M.D.Fla. 2001)(The court found that the record supported the plaintiffs "claim of [physical] injury as the rectal examination resulted in increased blood pressure, chest pain, ... The Court held that this was an adequate allegation of physical injury to survive "a motion to dismiss under §1997e(e)"). The Plaintiff therefore has stated a claim under §1983, and can Substantiate it with the Defendants Compliance of the Discovery, and should receive Compensatory Damages.

Lastly, Congress did not intend section 1997e(e) to bar the recovery for all forms of Relief, or to bar §1983 completely. See **U.S. v. HABER** 251 F.3d 881 (10th Cir.2001)(we will also address & whether section 1997e(e) would bar consideration of punitive damages on remand. We note that, as a general rule, punitive damages may be recovered for constitutional violations without a showing of compensable injury. See **BASISTA v. WEIR** 340 F.2d 74,87-88(3d Cir.1965)... **ALEXANDER v. RIGA** 208 F.3d 419,430(3d Cir.2000)("[B]eyond a doubt, punitive damages can be awarded in a civil rights case where a jury finds a constitutional violation, even when the jury has not awarded compensatory or nominal damages." ...)); Also **SMITH v. WADE** 103 S.Ct. 1625(1983)(holding punitive damages are authorized for violations of constitutional rights); **HUGHES v. LOTT** 350 F.3d 1157,1162(11th Cir. 2003)(holding section 1997e(e) does not preclude nominal damages); **DAVIS v. DIST. OF COLUMBIA** 158 F.3d 1342,1346(D.C.Cir. 1998)(stating that section 1997e(e) does not preclude injunctive relief); **ZEHNER V. TRIGG** 133 F.3d 459,462(7th Cir. 1997)(same). In **HOCK v. THIPEDEAU** 238 F.Supp.2d 466,488(D.Conn. 2002) the Court Found;(In light of the Second Circuit's recent decision in **THOMPSON v. CARTER** 284 F.3d 411

(2002), (the defendant's argument based on Section 1997e(e) fails because it misinterprets the law....it does not restrict a plaintiff's ability to recover compensatory damages for actual injury, nominal or punitive damages, or injunctive and declaratory relief.") Also, in **MITCHELL v. HORN** 318 F.3d 523(3rd Cir. 2003)(We also agree with several other courts of appeals that §1997e(e) does not apply to claims seeking injunctive or declaratory relief. see **THOMPSON v. CARTER** 284 F.3d 411, 418(2d Cir.2002)("Section 1997e(e) does not prevent a prisoner from obtaining injunctive or declaratory relief."(see corresponding cases)).

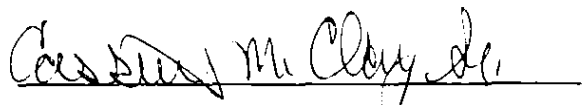
Therefore, the Plaintiff has shown in his original complaint, the reference to the Physical injury, that Derived directly from the defendants unconstitutional actions, which inturn has taken a very severe toll on the Plaintiff's Mental Health, and Physical well-being, and as such this case should proceed to a Jury Trial, or in the alternative, with the showing herein, that discovery be initiated, and the issues be heard concerning the Constitutional Violations, and that the other Defendants be Served, and added to these proceedings.

CONCLUSION

The Plaintiff has therefore stated a Fifth Amendment Claim of "Taking of Property (Money)", or in the alternative, A 14th Amendment Claim, Violation of Due Process before Deprivation of his Property (Money) and as a Result of the Defendants Arbitrary, and Capricious Determination, the Plaintiff was Denied his 1st Amendment Right to Access the Court, by the Unconstitutional D.O.C., DC-ADM 005(F)(1&2); 803 VI(C)(2)(a&b), and 42 Pa.C.S.A. §9728(Act 84) Policies, where there unreasonable application of these Policies is in Total Disregard of the Law.

Therefore the Plaintiff's Motion in Opposition to the Defendants Motion to Dismiss, and his accompanying Memorandum of Law in Support of, should be GRANTED, and the Defendant's Motion be DENIED.

RESPECTFULLY SUBMITTED;

A handwritten signature in cursive script, reading "Cassius M. Clay Sr.", is written over a horizontal line.

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DATED: JANUARY 19, 2006.